

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PLECTRUM LLC,

Plaintiff,

v.

FORTINET, INC.,

Defendant.

Case No. 4:17-cv-00082-ALM

JURY TRIAL DEMANDED

DECLARATION OF TODD NELSON

1. My name is Todd Nelson. I am employed by Fortinet, Inc. (“Fortinet”) as Vice President, Legal. I have been an employee and in-house attorney for Fortinet for over 12 years—since June 21, 2005.

2. My duties include in-house legal representation for Fortinet across a broad range of legal disciplines, with an emphasis on intellectual property matters and corporate compliance.

3. I reside in Los Altos, California and work at Fortinet’s headquarters in Sunnyvale, California.

4. The facts set forth in this declaration are based on my personal knowledge, on information contained in the business records of Fortinet, or on discussions I had with other Fortinet personnel with such knowledge for purposes of investigating factual matters relevant to this declaration. If called as a witness, I could and would testify competently to these statements.

5. Fortinet is a Delaware corporation with its headquarters and principal place of business in Sunnyvale, California.

6. Virtually all of Fortinet’s United States employees devoted to engineering, finance, operations, manufacturing, and marketing work in California, including at Fortinet’s

headquarters in Sunnyvale and its office in Union City. Employees devoted to engineering, operations, and manufacturing also work in Vancouver, Canada.

7. The importance of Fortinet's headquarters in Sunnyvale, California and, more generally, its employees in California is difficult to exaggerate. Around 95% of Fortinet's United States employees who research, design, and develop products work in Sunnyvale, California and almost 99% of them work in California. Similarly, about two-thirds of Fortinet's United States employees devoted to finance, operations, manufacturing, and marketing work in Sunnyvale, California and almost 90% of them work in California.

8. Virtually all of Fortinet's senior management is in Sunnyvale, California. Indeed, decisions regarding marketing, sales, and pricing occur predominantly in Sunnyvale, California.

9. I understand that Plaintiff Plectrum LLC has accused certain FortiGate and FortiSwitch products of infringing Plectrum's patents.

10. Numerous Fortinet employees with knowledge regarding the accused FortiGate and FortiSwitch products—including employees who designed, developed, commercialized, and marketed these products and senior employees in the sales, marketing, finance, and products divisions—work at Fortinet's headquarters in Sunnyvale, California. Such employees include:

- a. Jim Bray, Director, Corporate Finance & Treasury, who has knowledge regarding Fortinet's financial records, costs, profits, etc., related to Fortinet's products;
- b. John Maddison, Vice President, Products and Solution, who has knowledge regarding the lifecycles of Fortinet's products;
- c. James Allen, Director of Product Marketing, who has knowledge regarding the marketing of Fortinet's products;

d. Joseph Mihelich, Vice President of Product Engineering, who is the product lead for all FortiSwitch products; and

e. Michael Xie, Chief Technology Officer, who is the ultimate engineering and product lead for all FortiGate and FortiSwitch products.

11. The hardware of the accused FortiGate and FortiSwitch products is manufactured by Fortinet's OEMs in China and Taiwan. But the specifications according to which the hardware is manufactured are designed by Fortinet's engineers in Sunnyvale, California.

12. To the extent any quality-control testing is performed on the accused FortiGate and FortiSwitch products destined for United States customers, such testing occurs in or near Sunnyvale, California. In addition, all accused FortiGate and FortiSwitch products shipped in the United States are shipped from there.

13. The vast majority of documents in Fortinet's control or possession relating to the design, development, commercialization, and marketing of the accused FortiGate and FortiSwitch products, including the underlying source code, are stored on servers and computers physically located in or near Sunnyvale, California. In addition, hard copies of some documents are also found in Fortinet's Sunnyvale, California headquarters. Additional documents and source code are located in Burnaby (just outside of Vancouver, British Columbia, Canada).

14. While a few Fortinet employees work in Texas, and Fortinet rents office space in Plano, Texas, none of these employees were or are involved in the design and development of the accused FortiGate and FortiSwitch products. Instead, these employees are sales and customer service representatives. I am not aware of **any** Fortinet employees in Texas who have **any** knowledge or testimony that is or would be relevant to this high-technology, patent case that purports to accuse the design, operation and technical details of Fortinet products (which makes

sense given that the limited employees Fortinet has in Texas perform primarily sales-related functions). Moreover, I am not aware of any documents present in Texas that are not also found in California.

15. Fortinet also has offices in Reston, VA, New York, NY, and Sunrise and Tampa, FL. Again, employees in these offices were not and are not involved in the design and development of the accused FortiGate and FortiSwitch products, and I am not aware of any documents or employee knowledge relevant to this case that is not also found in Fortinet's headquarters in Sunnyvale, California or its office in Union City, California. In contrast, and as explained above, there are vast numbers of documents and employees with unique knowledge relevant to this case in Sunnyvale, California that are not found in any other Fortinet office.

16. Fortinet has never filed a lawsuit in the Eastern District of Texas.

17. The accused FortiGate and FortiSwitch products are available for purchase throughout the United States, including in the Northern District of California.

I declare under penalty of perjury that the foregoing is true and correct. Signed this 29th day of June, 2017, in Sunnyvale, California.



Todd Nelson